

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1285 - SB 1462**

March 12, 2023

**SUMMARY OF BILL:** Enacts the *Criminal Forfeiture Process Act*.

Rewrites the process for asset seizure and forfeiture in certain criminal cases. Applies to:

- the seizure and forfeiture of all property that, prior to July 1, 2023, was forfeited utilizing the current procedure; and
- the seizure of property subject to forfeiture occurring on or after July 1, 2023.

Eliminates civil forfeiture process in all cases for which the proposed legislation is applicable. Moves all forfeiture hearings from administrative offices to criminal courts.

**FISCAL IMPACT:**

**Increase State Expenditures – Net Impact –**

**Exceeds \$2,567,600/FY23-24/General Fund**

**Exceeds \$1,969,500/FY24-25 and Subsequent Years/General Fund**

**Exceeds \$228,800/FY23-24 and Subsequent Years/**

**Indigent Representation Fund**

**Other Fiscal Impact – State and local law enforcement agencies, as well as the District Attorneys General Conference, may realize significant intermittent increases in expenditures related to liability for attorneys' fees and various interest moneys resulting from negative outcomes in judicial proceedings. Due to various factors, a precise estimate of any such increases cannot be reasonably quantified.**

**State and local law enforcement agencies may also realize a significant increase in expenditures related to extended vehicle storage times. A precise estimate of any such increases cannot be reasonably quantified.**

**Assumptions:**

- The proposed legislation eliminates the current civil process for the seizure of property subject to forfeiture. In doing so, it is expected to result in five significant impacts:

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- Changes the current hearings regarding seized property from administrative hearings, which are held in regional offices across the state (most often Tennessee Highway Patrol (THP) offices), and moves them into criminal courts – either general sessions or state trial;
  - Requires, in many cases, a court-appointed counsel to represent a defendant in a forfeiture proceeding;
  - Places significant new responsibilities on prosecutors;
  - Reduces, significantly, the volume and value of assets seized by both state and local law enforcement agencies; and
  - Assigns liability for attorneys' fees and other moneys to law enforcement agencies and prosecutors in certain judicial proceedings when the defendant prevails.
- Based on the Department of Safety's (DOS) annual asset forfeiture report, over the last five years, the average number of forfeiture actions, which include hearings and settlements, was 2,286.
  - The proposed legislation is assumed to result in a decrease in the number of hearings, and an increase in the number of challenges. Any decrease in the number of hearings is assumed to be offset by the increase in the number of challenges. Therefore, the average number of actions is assumed to remain constant.
  - It is assumed that 25 percent, or 572 (2,286 actions x 25%), of these actions will require the service of a public defender due to indigency.
  - Based on information provided by the Administrative Office of the Courts (AOC), it is assumed that each hearing would take approximately eight billable hours of work.
  - Pursuant to Supreme Court Rule 13, Section 2, the hourly rate for services by appointed counsel is \$50/hr. Therefore, each hearing would result in a cost of \$400 (8 hours x \$50/hr).
  - For court-appointed attorneys, these costs are paid out of the Indigent Representation Fund.
  - The increase in state expenditures to the Indigent Representation Fund related to representing indigent clients in asset forfeiture hearings is therefore estimated to be \$228,800 (572 hearings x \$400).
  - In addition, based on information provided by the District Public Defenders Conference (DPDC), the proposed legislation is expected to potentially double the number of hearings a public defender would need to attend.
  - The increased caseload and travel are expected to make public defenders less available for other cases they currently handle. In those cases, the court will appoint a private attorney. The private attorneys will also be paid from the Indigent Representation Fund.
  - A precise number for this additional impact cannot be quantified, but it will result in a total impact to the Indigent Representation Fund that exceeds \$228,800 in FY23-24 and subsequent years.
  - The new indigent representation payments will require updates to the AOC's Claim and Payment (ACAP) payment system. The specific updates required will depend upon how the Supreme Court decides to amend its Rule 13 to accommodate the changes in the proposed legislation. It is not known at this time how the Supreme Court will decide to amend the rule. Depending on such, the relevant vendor has indicated that the updates

could cost between \$25,000 and \$250,000. For the purposes of this analysis, it is simply assumed to exceed \$25,000.

- A one-time increase in state expenditures to the AOC for ACAP updates estimated to exceed \$25,000 in FY23-24.
- According to AOC and the Court Clerks Association, any potential increase in the caseload and administrative burden on state and local courts is estimated to be absorbed within existing resources.
- Based on information provided by the DPDC, requiring public defenders to represent indigent clients in asset forfeiture hearings represents a significant departure from current statute and practice.
- It would require additional training for most public defenders who are typically not experienced in the current civil administrative process.
- The increase in expenditures to the DPDC to implement the required additional training is estimated to be \$25,000 in FY23-24 and subsequent years.
- Based on information previously provided by the District Attorneys General Conference (DAGC), the proposed legislation will place significant additional burdens on prosecutors.
- In order to accommodate the new responsibilities, the DAGC will require new personnel and funding for additional expenses.
- The estimated additional personnel required is 31 Assistant District Attorneys, 15 Paralegals, and 15 Secretaries.
- Based on information previously provided by the DAGC, the one-time costs for initial office setup and equipment for each position are estimated to be as follows:
  - Attorneys: \$142,600
  - Secretaries: \$69,000
  - Paralegals: \$69,000
- Therefore, a one-time increase in state expenditures for DAGC office setup estimated to be \$280,600 (\$142,600 + \$69,000 + \$69,000) in FY23-24.
- Based on information previously provided by the DAGC, the costs for salaries, benefits, administrative expenses in year one are estimated to be as follows:
  - Attorneys: \$2,979,221 (\$2,335,104 salaries + 260,117 benefits + \$236,800 administration costs + \$147,200 office setup)
  - Secretaries: \$878,876 (\$617,400 salaries + 81,476 benefits + \$111,000 administration costs + \$69,000 office setup)
  - Paralegals: \$1,071,634 (\$792,000 salaries + 99,634 benefits + \$111,000 administration costs + \$69,000 office setup)
- The increase in state expenditures to DAGC for the additional positions is thus estimated to be \$4,929,731 (\$2,979,221 + \$878,876 + \$1,071,634) in FY23-24.
- In year two, the attorney's salaries for attorneys would increase by one level. However, with various attorneys at differing starting levels, a precise increase could not be calculated. Therefore, the increase in state expenditures for the DAGC is estimated to exceed \$4,649,131 [\$4,929,731 – (\$142,600 office setup + \$69,000 office setup + \$69,000 office setup)] in FY24-25 and subsequent years.
- The DAGC will also require additional annual training estimated to cost \$25,000 in FY23-24 and subsequent years.

- The DOS will need to replace and distribute new notice of hearing and seizure forms to all law enforcement agencies in the state. The increase in state expenditures to destroy the current stock and create and distribute the new version is estimated to be \$292,511 in FY23-24.
- The total increase in state expenditures to the General Fund is estimated to exceed \$5,297,242 (\$25,000 ACAP + \$25,000 DPDC training + \$25,000 DAGC training + \$4,929,731 DAGC positions + \$292,511 form creation) in FY23-24.
- The total increase in state expenditures to the General Fund is estimated to exceed \$4,699,131 (\$25,000 DPDC training + \$25,000 DAGC training + \$4,649,131 DAGC positions) in FY24-25 and subsequent years.
- The process of moving civil asset forfeiture hearings from administrative offices to criminal courts will effectively eliminate the need for the DOS seizure hearing program.
- Based on information provided by DOS, this is estimated to result in the termination of eight Attorneys, three Administrative Service Assistants 2, one Administrative Service Assistant 3, and eight Administrative Secretaries. The total estimated decrease in expenditures provided by DOS associated with these positions is \$1,462,512 in salaries and benefits and an average of \$639,303 in recurring administrative expenses.
- In addition, DOS will realize a decrease in expenditures related to cost bonds, court report, and administrative judges. The total recurring decrease in expenditures related to these things based on a three-year average is estimated to be \$627,854 (\$13,850 cost bonds + \$109,544 court report + \$504,460 admin judges).
- The total decrease in expenditures to the DOS is estimated to be \$2,729,669 (\$1,462,512 salaries and benefits + \$639,303 admin + \$627,854 various other) in FY23-24 and subsequent years.
- There will be a net increase in expenditures from the General Fund estimated to exceed \$2,567,573 (\$5,297,242 - \$2,729,669) in FY23-24.
- There will be a net increase in expenditures from the General Fund estimated to exceed \$1,969,462 (\$4,699,131 - \$2,729,669) in FY24-25 and subsequent years.
- In any judicial proceeding governed by the proposed legislation in which the defendant prevails by recovering 50 percent or more by value of seized assets, the court is required to order the seizing agency or prosecuting authority to pay:
  - reasonable attorney fees and other litigation costs incurred by the petitioner or criminal defendant;
  - post-judgment interest; and
  - in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.
- Therefore, state and local law enforcement agencies, as well as the DAGC, may realize significant intermittent increases in expenditures related to the described liabilities. Due to various factors, a precise estimate of any such increases cannot be reasonably quantified.
- To the extent that the proposed legislation extends the time that it takes to determine an outcome, it could result in a significant increase in expenditures to state and local agencies related to vehicle storage. Due to multiple unknown variables including how the new process will affect resolution times, the degree to which it will affect resolution times, the number of vehicles any given agency may seize, and whether or not the

agency will have lot space to store the vehicles or will have to pay a private provider, a precise fiscal impact related to increased vehicle storage cannot be quantified.

- This legislation requires a district attorney general (DAG) to, after consultation with the appropriate United States attorney, establish guidelines for the use of federal adoption of seized property and participation in joint state and federal task forces in their district based on federal safeguards against the circumvention of state law. For the purpose of this analysis, it is assumed all DAGs will permit DOS and law enforcement agencies to refuse to let a case go to the federal government and, therefore, will not significantly impact state or local government revenue.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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